

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.644 of 2008

O R D E R:

This Criminal Revision Case under Sections 397 and 401

of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the order dated 23.02.2008, passed by the Judicial Magistrate of First Class, Pakala, in C.F.No.1412 of 2007.

2. The revision petitioner herein is the complainant, whereas respondent Nos.2 to 6 herein are A.1 to A.5 in C.F.No.1412 of 2007 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.F before the trial Court.

3. The brief facts of the case are that the complainant filed a private complaint before the learned Judicial Magistrate of First Class, Pakala, in C.F.No.1412 of 2007 against A.1 to A.5 for the offences punishable under Sections 406 & 120-B of the Indian Penal Code, 1860 (for Short 'the I.P.C') alleging that the accused has withdrawn the amount belonging to the ancient temple of Sri Lakshmi Narasimhaswamy at Devalampeta village, Pulicherla Mandal, Chittoor District, spent huge amounts without permission of the concerned authorities and mis-utilised the said funds. On 09.05.2006, complainant got issued a legal notice to the accused to send the details of permission and expenditure incurred by them. Though, notice was received, no reply was given by A.1, as such it is deemed that they have misappropriated the temple funds.

After receiving the complaint, the Station House Officer, Kallur Police Station, registered the case in Cr.No.26 of 2007 for the offences punishable under Sections 406 & 120-B I.P.C, investigated into and filed the final report stating that the case is one of politically motivated and referred the case as mistake of fact. After filing of the final report, the complainant filed the protest petition, on which the Magistrate recorded the statement of the complainant and five other witnesses, got issued notice to the Assistant Commissioner of Endowments, Chittoor, recorded his statement and further directed to file his report. The Assistant Commissioner of the Endowments, in his evidence stated

that the trust board obtained permission to withdraw an amount of Rs.1,48,973/- and Rs.1,54,755/- and thus, permission was given for withdrawal of total amount of Rs.3,03,728/-. The Assistant Commissioner also stated that the Chair Person has not committed any misappropriation of funds of the temple, but there are some irregularities in the procedural aspects, and for that he is taking action. The Learned Magistrate after considering the statement of the complainant and other witnesses, and basing on the report of the Assistant Commissioner of Endowments, held that there is no sufficient ground to proceed against the accused and dismissed the complaint.

4. Aggrieved by the said order passed by the Judicial Magistrate of First Class, Pakala, the complainant preferred the present revision case.

5. The learned counsel appearing for the revision petitioner/ complainant argued that the complainant filed the complaint on the ground that respondent Nos.2 to 6/A.1 to A.5 misappropriated the amount belonging to the ancient temple of Sri Lakshmi Narasimhaswamy, at Devalampeta village, Pulicherla Mandal, Chittoor District, and the same was registered as case in Cr.No.26 of 2007 for the offences punishable under Sections 406 & 120-B I.P.C; that the Investigating Officer in collusion with the accused, filed the final report referring it as mistake of fact and on that, the complainant filed the protest petition; that his statement and the statements of other witnesses were recorded by the Magistrate, and a report of Assistant Commissioner of Endowments was also called for; that for taking cognizance of the offence, evidence of PW.1 only is sufficient; that the Assistant Commissioner of Endowments should not have summoned as he was not cited as witness by the police; that by examining the Assistant Commissioner of Endowments, the learned Magistrate dismissed the complaint; that the trial Court ought to have seen the sworn statement of the complainant and witnesses and took cognizance of the offence; and that the trial Court erred in placing absolute reliance on the report of the Assistant Commissioner of Endowments. To support his contention, he relied upon the case laws reported in (1) **Chandra Deo Singh v. Prakash Chandra Bose alias Chabi Bose and another**, wherein it is held at para 8 as follows:

"8. Coming to the second ground, we have no hesitation in holding that the test propounded by the learned single judge of the High Court is wholly wrong. For determining the question whether any process is to

be issued or not. what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry.

....

No doubt, as stated in sub-s. (1) of s. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

(2) **Laxmikant Vyankatesh Pande v. Gokuldas Popatlal Sindhi and another,**

wherein it is held as follows:

"The Supreme Court has observed while interpreting Section 203, Cr.P.C. as follows - Placitum (c) runs as under:—.

Since the object of an enquiry under Section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to the conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under Section 202, or statements made in an investigation under that section, as the case may be. He is not entitled to rely upon any material besides this. Where there is prima facie evidence, even though an accused may have a defence that the offence is committed by some other person or persons, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused."

and also relied upon (3) **Manzoor Ali Khan v. Union of India and others,**

wherein it is held by the Hon'ble Supreme Court of India as follows:

"30. While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed: (A.R. Antulay v. Ramdas Srinivas Nayak and Anr. [(1984) 2 SCC 500, para 6])

6. It is a well-recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision.

.....

While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 Code of Criminal Procedure. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision."

and finally prayed the Court to allow the revision case by setting aside the order dated 23.02.2008 passed by the Judicial Magistrate of First Class, Pakala, in C.F.No.1412 of 2007, and issue process against the accused.

6. On the other hand, the learned Public Prosecutor for the State of Andhra Pradesh argued that in this case, the complainant has to file Public Interest Litigation case, but not the complaint; that police after investigation, filed the final report stating that the case of the complainant is politically motivated and referred the case as mistake of fact; that the order dated 23.02.2008 passed by the Judicial Magistrate of First Class, Pakala, in C.F.No.1412 of 2007 needs no interference and prayed the Court to dismiss the revision case.

7. Now, the point for determination is:

Whether the revision petitioner herein is entitled to set aside the order dated 23.02.2008 passed by the learned Judicial Magistrate of First Class, Pakala, in C.F.No.1412 of 2007, as prayed for or not?

8. **P O I N T:** A perusal of the record shows that the complainant filed a private complaint against A.1 to A.5 for the offences punishable under Sections 406 & 120-B I.P.C alleging that they secretly withdrawn the amounts belonging to the temple of Sri Lakshmi Narasimhaswamy, misused the same and they have not accounted for that expenditure. The said private complaint was referred to the police, Kallur Police Station, and a case in Cr.No.26 of 2007 was registered against them. During the course of investigation, the Sub-Inspector of Police examined the witnesses including the complainant and Assistant Commissioner of Endowments, and after completing the investigation, he filed the final report stating that the case is one of politically motivated and referred the case as mistake of fact. Aggrieved by the same, the complainant filed the protest petition alleging that the Sub-Inspector of Police, Kallur Police Station, has not collected the relevant material in connection with the case, he was influenced by the political leaders and failed to investigate on correct lines.

9. During the course of enquiry, the Magistrate recorded the statements of the complainant, witnesses and also the Assistant Commissioner of Endowments. Complainant and witnesses in their statements stated that the accused had

withdrawn the amount from the Bank, as such they gave notice and the accused had not issued any reply to their notice, and hence they filed the complaint. The complainant as well as witnesses in their sworn statements never stated that A.1 to A.5 have withdrawn the amounts without the permission of the Endowments Department and misused the same for their personal expenses. The learned Magistrate after considering the evidence of the witnesses, after considering the report of the Assistant Commissioner of Endowments who categorically stated that the Endowments Department granted permission to the accused for withdrawing the amounts, there are no irregularities in maintaining the accounts and the chair person has not committed any misappropriation of funds of the temple and in view of the evidence on record, rightly dismissed the complaint without issuing process to the accused.

10. The complainant has not explained as to how Chapter XV of Cr.P.C was violated by the learned Magistrate.

Sec.202(1) Cr.P.C reads as follows:

202. Postponement of issue of process-- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

The learned Magistrate after examining the complaint and other witnesses, found no sufficient grounds for proceeding for issue of process against A.1 to A.5. Since the object of enquiry under Section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In the present case, the Magistrate while enquiring under Section 202 Cr.P.C, satisfied himself that there is no sufficient ground for proceeding against the accused and dismissed the complaint without issuing process. Therefore, the principle laid down in **Chandra Deo Singh's case** (first cited supra) relied upon by the learned counsel for revision petitioner, no doubt was followed by the learned Magistrate, while dismissing the complaint.

11. Further, in ***Laxmikant Vyankatesh Pande's case*** (second cited supra) relied upon by the learned counsel for the revision petitioner, the Magistrate allowed the accused to produce certain documents, which are not relevant and which are not warranted under Section 203 Cr.P.C. In the present case, no such act was done by the Magistrate. Therefore, this case law has no application to the facts of the present case.

12. The learned Public Prosecutor argued that the complainant ought to have filed the Public Litigation Interest case, but not the complaint. Contrary to the allegation, the learned counsel appearing for the revision petitioner relied upon ***Manzoor Ali Khan's case*** (third cited supra), wherein the Hon'ble Supreme Court clearly held that Sec.190(a) Cr.P.C permits anyone to approach the Magistrate with a complaint and it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. Therefore, in view of the principle laid down in the said case law, the plea taken by the learned Public Prosecutor is not sustainable.

13. Therefore, in view of the above facts and circumstances of the case, I am of the view that the learned Magistrate satisfied that there is no sufficient ground to proceed against A.1 to A.5 by issuing process against them. Thus, the complainant has not made out any case to interfere with the order passed by the trial Court and the criminal revision is liable to be dismissed.

14. Accordingly, the Criminal Revision Case is dismissed confirming the order dated 23.02.2008, passed by the Judicial Magistrate of First Class, Pakala, in C.F.No.1412 of 2007.

15. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 02.04.2015

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